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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,329	10/10/2003	Paul J. Van Dyk	TRCX-005/01US (300171-202)	9235
22903	7590	12/08/2005	EXAMINER	
COOLEY GODWARD LLP ATTN: PATENT GROUP 11951 FREEDOM DRIVE, SUITE 1700 ONE FREEDOM SQUARE- RESTON TOWN CENTER RESTON, VA 20190-5061			PATEL, RAMESH B	
			ART UNIT	PAPER NUMBER
			2121	

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,329

Applicant(s)

VAN DYK ET AL.

Examiner

Ramesh B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/11/2004</u> . | 6) ☐ Other: _____ |

DETAILED ACTION

1. Claims 1-12 and 21-27 are presented for examination. Claims 13-20 and 28-41 have been withdrawn from further consideration due to the restriction requirement and **election of Group I, claims 1-12 and 21-27 without traverse. The applicant is reminded to cancel claims non-elected in this application in response to this application.**

2. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. The Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

Information Disclosure Statement

3. The information disclosure statement filed 3/11/2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the reference "Quantitative Risk and Reliability Assessment is missing a publication date. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-12 and 21-27 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-23 of copending Application No. US 2005/0027379.

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a method and a system for managing a safety instrumented function including a plurality of instrumented function components comprising obtaining operating information about at least one of the plurality of instrumented function components...”

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12 and 21-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Eryurek et al. (PUB. No.: US 2004/0186927 A1).

As to claims 1 and 21, Eryurek teaches the invention including a method and a system for managing a safety instrumented function including a plurality of instrumented function components, the method comprising: obtaining operating information about at least one of the plurality of instrumented function components is taught as the process system uses an asset optimization reporter to collect status information pertaining to the assets of the process plant from various data sources of the plant including data tools, collectors and data generators (see, abstract and figures 1-5); determining a probability of failure on demand for the safety instrumented function based on the operating information is taught as the (see, abstract and figures 11-20 and page 15, paragraph [0093]-[0094]); comparing the probability of failure on demand with a designed probability of failure on demand for the safety instrumented function to establish a variance (see, abstract and page 14, paragraph [0085] and page 15, paragraph [0093]-

[0094]); and managing the plurality of instrumented function components based on the variance (see, abstract and figures 11-20 and page 4, paragraphs [0034] to [0037]).

As to claims 2-3 and 22-23, Eryurek teaches the method wherein the probability of failure on demand is an instantaneous probability of failure on demand and an average probability of failure on demand (see, abstract and figures 11-20 and page 15, paragraph [0093]-[0094]).

As to claims 4-6, 8 and 24-25, Eryurek teaches the method wherein the obtaining operating information comprises obtaining a test completion time for the at least one of the plurality of instrumented function components and includes obtaining an indication that the at least one of the plurality of instrumented function components has failed, wherein the test completion time is a future test completion time, and wherein the determining the probability of failure on demand is performed before the future test completion time and obtaining operating information about each of the plurality of instrumented function components, wherein the determining includes calculating probability of failure on demand for each of the plurality of instrumented function components as a function of corresponding operating information received for each of the plurality of instrumented function components, thereby generating a plurality of probability of failure on demand values and wherein the probability of failure on demand for the safety instrumented function is determined as a function of the plurality of

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probability of failure on demand values (see, abstract and figures 1-5 and 11-20 and page 15, paragraph [0093]-[0094]).

As to claims 7, 9-10 and 26-27, Eryurek teaches the method including a probability of failure on demand for the at least one of the plurality of instrumented function components to a predefined value; wherein the determining includes calculating the probability of failure on demand for the safety instrumented function as a function of the probability of failure on demand for the at least one of the plurality of instrumented function components, wherein the obtaining information comprises obtaining environmental operating information and wherein the environmental operating information includes information selected from the group consisting of: temperature information, pressure information and humidity information (see, abstract and figures 1-5 and page 6, paragraph [0048]).

As to claims 11-12, Eryurek teaches the method wherein the managing comprises reducing a test interval between tests of the at least one of a plurality of instrumented function components in response to the variance exceeding a maximum variance and reducing a test interval between tests of another of the plurality of instrumented function components in response to the variance exceeding a maximum variance (see, abstract and figures 11-20 and page 4, paragraphs [0034] to [0037]).

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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramesh B. Patel whose telephone number is 571-272-3688. The examiner can normally be reached on M-Th; 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on 571-272-3687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ramesh B. Patel
Primary Examiner 12/5/05
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